

REMARKS

Claims 34-37, 39, 41, 43, 44 and 71, as amended, remain herein.

1. Applicant notes and appreciates the indication in the Office Action that the only objection to allowance of claim 71 is that it is dependent upon a presently rejected claim. Claim 71 is now amended to independent form and this is fully in condition for allowance, which is respectfully requested.

2. Claims 34-36, 39, 41, 43 and 44 were rejected under § 103(a) over Lyle '713 in view of Crocker '742. This is another restatement of the same issue raised in the December 23, 2005 Office Action, but no convincing rebuttal of applicant's traversing arguments was present in the Office Action of July 11, 2006, or in the Office Action of January 29, 2007.

Lyle '713 discloses a composition and method of therapeutic treatment for inhibiting vascular restenosis. Lyle, col. 4, lines 35-40, disclose administering in vivo an antisense polypeptide or oligonucleotide or molecule having similar specificity by using a balloon infusion catheter with holes in it for delivery to the particular target site to prevent life-threatening restenosis. This is the only description of a "balloon infusion catheter with holes in it" in Lyle '713. However, Lyle does not disclose a "seed" as that term is used in this application and widely in this art. Lyle '713 does not disclose a substantially hollow seed for implantation into a tissue or organ, which seed has an opening at each end thereof for providing controlled diffusion of a therapeutic agent from such hollow seed. Nothing in Lyle '213 or in the Office Action shows such a seed.

There is no disclosure or teaching in Lyle '713 that would have suggested applicant's claimed invention to one of ordinary skill in this art. Nothing in the Office Action demonstrates that applicant's foregoing arguments distinguishing applicant's claims from Lyle, are incorrect.

Crocker '742 discloses a radiation delivery balloon for a balloon catheter that includes a central zone 32 and proximal zone 28. At an inflation pressure of about 8 atm., the proximal zone 28 has an outside diameter of about 3 mm and the central zone 32 has an outside diameter of about 3.4 mm. As shown in Figs. 3 and 4, a large zone 32 is provided with a radiation source 34 surrounded by outer sleeve 38. Alternatively, the outer sleeve 38 can be omitted, and radiation source 34 adequately secured to the exterior of the balloon.

Crocker, like Lyle, does not disclose a "seed" as that term is used in this application and widely in this art. Crocker, like Lyle, does not disclose hollow seeds for implantation into a tissue or organ, which seeds have an opening at each end thereof. The balloon catheters mentioned in both Lyle and Crocker are not seeds for implantation, and cannot be used as an implantable seed because it is necessary to have a central guide wire running through both ends of such balloons and secure them to the catheter. The Office Action of July 11, 2006 assumed that "such a wire would not preclude implantation," but did not explain any factual basis in either of the cited references (or any other logic) for such a conclusion. The January 11, 2007 Office Action retreats to saying "in the absence of the guide wire [the Crocker catheter] constitutes the claimed implantable seed." Again, no basis for this presumptive conclusionary leap is demonstrated in the Office Action or otherwise in this record.

The Office Action further retreats saying that Crocker discloses "leaving the catheter in position for a sufficiently long time to deliver the desired dose of radiation after which the

balloon is deflated and the catheter withdrawn. That is, the device is implanted, albeit temporarily.” (Office Action, 1/29/07, pages 2-3). Admittedly, the balloon catheter remains in a patient’s tissue only temporarily. That Office Action also argues that “the catheter and the guide wire are not of one piece.” (id. at 2). One piece or not, the Crocker balloon portion is never left freestanding in the patient’s body tissue.

The terms “consisting of,” “seed,” and “implementation” in applicant’s claims have always meant, and mean in this art, a seed which when implanted is in a state of freestanding retention in a patient’s body tissue – i.e., free from any catheter or other implantation device – so that it can remain indefinitely *in situ*, in such tissue *in vivo*. Applicant’s independent claim 34 has been further amended to state that the claimed seed is adapted for implantation in tissue “and for freestanding retention therein indefinitely.”

Applicant’s claimed seed is not a Lyle/Crocker style balloon catheter. There is nothing in either Lyle or Crocker that in any way suggests a hollow seed for freestanding, indefinite implantation, let alone such a seed for implantation having an opening at each end thereof, to provide controlled diffusion of a therapeutic agent from the hollow seed. And, contrary to the unsupported conclusion in the Office Action, there is nothing in Lyle or Crocker that would make it obvious to use a balloon catheter as an implantation seed to be left indefinitely in a live body. Nor is there any disclosure or teaching in either Lyle or Crocker that would have suggested the desirability of combining any portions thereof effectively to anticipate or suggest applicant’s presently-claimed invention. Accordingly, reconsideration and withdrawal of these grounds of rejection are respectfully requested.

For all the foregoing reasons, all claims 34-37, 39, 41, 43, 44 and 71 are now patentably distinguished over all grounds of rejection cited in the Office Action. Accordingly, allowance of all claims is respectfully requested.

The PTO is hereby authorized to charge/credit any deficiency/overpayment to Deposit Account No. 19-4293 (Order No. 28964.0054). Should the Examiner believe that further changes would place this application in even better condition for issue, the Examiner is invited to telephone applicant's undersigned attorney.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Roger W. Parkhurst", is written over the printed name.

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RWP/eps
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